

eligible for coverage under any classification or pay system established under subpart B or C of this part. Refer to subparts B through G of this part for specific information regarding the coverage of each subpart.

(b)(1) Subpart A of this part becomes applicable to all eligible employees on March 3, 2005.

(2) The Secretary or designee may, at his or her sole and exclusive discretion and after coordination with OPM, establish the effective date for applying subparts E, F, and G of this part to all eligible employees. Unless otherwise determined by the Secretary and the Director, subparts E, F, and G of this part will become applicable to all eligible employees no later than August 1, 2005.

(3) With respect to subparts B, C, and D of this part, the Secretary or designee may, at his or her sole and exclusive discretion and after coordination with OPM, apply one or more of these subparts to a specific category or categories of eligible civilian employees at any time. With respect to any given category of civilian employees, the Secretary or designee may apply some of these subparts, but not others, and such coverage determinations may be made effective on different dates (e.g., in order to phase in coverage under a new classification, pay, and performance management system).

(4) DHS will notify affected employees and labor organizations in advance of the application of one or more subparts of this part to them.

(c) Until the Secretary or designee makes a determination under paragraph (b) of this section to apply the provisions of one or more subparts of this part to a particular category or categories of eligible DHS employees, those DHS employees will continue to be covered by the applicable Federal laws and regulations that would apply to them in the absence of this part. All personnel actions affecting DHS employees must be based on the Federal laws and regulations applicable to them on the effective date of the action.

(d) Any new DHS classification, pay, or performance management system covering Senior Executive Service (SES) members must be consistent

with the policies and procedures established by the Governmentwide SES pay-for-performance system authorized by 5 U.S.C. chapter 53, subchapter VIII, and applicable implementing regulations issued by OPM. If the Secretary determines that SES members employed by DHS should be covered by classification, pay, or performance management provisions that differ substantially from the Governmentwide SES pay-for-performance system, the Secretary and the Director must issue joint regulations consistent with all of the requirements of 5 U.S.C. 9701.

(e) At his or her sole and exclusive discretion, the Secretary or designee may, after coordination with OPM, rescind the application under paragraph (b) of this section of one or more subparts of this part to a particular category of employees and prescribe implementing directives for converting that category of employees to coverage under applicable title 5 provisions. DHS will notify affected employees and labor organizations in advance of a decision to rescind the application of one or more subparts of this part to them.

(f) The Secretary or other authorized DHS official may exercise an independent legal authority to establish a parallel system that follows some or all of the requirements in this part for a category of employees who are not eligible for coverage under this part.

§ 9701.103 Definitions.

In this part:

Authorized agency official means the Secretary or an official who is authorized to act for the Secretary in the matter concerned.

Coordination means the process by which DHS, after appropriate staff-level consultation, officially provides OPM with notice of a proposed action and intended effective date. If OPM concurs, or does not respond to that notice within 30 calendar days, DHS may proceed with the proposed action. However, if OPM indicates the matter has Governmentwide implications or consequences, DHS will not proceed until the matter is resolved. The coordination process is intended to give due deference to the flexibilities afforded DHS by the Homeland Security Act and the regulations in this part,

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without compromising OPM's institutional responsibility, as codified in 5 U.S.C. chapter 11 and Executive Order 13197 of January 18, 2001, to provide Governmentwide oversight in human resources management programs and practices.

Department or *DHS* means the Department of Homeland Security.

Director means the Director of the Office of Personnel Management.

Employee means an employee within the meaning of that term in 5 U.S.C. 2105.

General Schedule or *GS* means the General Schedule classification and pay system established under chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code.

Implementing directives means directives issued at the Departmental level by the Secretary or designee to carry out any policy or procedure established in accordance with this part. These directives may apply Departmentwide or to any part of the Department as determined by the Secretary at his or her sole and exclusive discretion.

OPM means the Office of Personnel Management.

Secretary means the Secretary of Homeland Security or, as authorized, the Deputy Secretary of Homeland Security.

Secretary or *designee* means the Secretary or a DHS official authorized to act for the Secretary in the matter concerned who serves as—

(1) The Undersecretary for Management; or

(2) The Chief Human Capital Officer for DHS.

§ 9701.104 Scope of authority.

Subject to the requirements and limitations in 5 U.S.C. 9701, the provisions in the following chapters of title 5, U.S. Code, and any related regulations, may be waived or modified in exercising the authority in 5 U.S.C. 9701:

(a) Chapter 43, dealing with performance appraisal systems;

(b) Chapter 51, dealing with General Schedule job classification;

(c) Chapter 53, dealing with pay for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees;

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(d) Chapter 71, dealing with labor relations;

(e) Chapter 75, dealing with adverse actions and certain other actions; and

(f) Chapter 77, dealing with the appeal of adverse actions and certain other actions.

§ 9701.105 Continuing collaboration.

(a) In accordance with 5 U.S.C. 9701(e)(1)(D), this section provides employee representatives with an opportunity to participate in the development of implementing directives. This process is not subject to the requirements established by subpart E of this part, including but not limited to §§ 9701.512 (regarding conferring on procedures for the exercise of management rights), 9701.517(a)(5) (regarding enforcement of the duty to consult or negotiate), 9701.518 (regarding the duty to bargain, confer, and consult), or 9701.519 (regarding impasse procedures).

(b)(1) For the purpose of this section, the term “employee representatives” includes representatives of labor organizations with exclusive recognition rights for units of DHS employees, as well as representatives of employees who are not within a unit for which a labor organization has exclusive recognition.

(2) Consistent with 5 U.S.C. 9701(e)(2)(A), (B), and (D), DHS will determine the number of employee representatives to be engaged in the continuing collaboration process.

(3) Each national labor organization with multiple collective bargaining units accorded exclusive recognition will determine how its units will be represented within the limitations imposed by DHS.

(c)(1) Within timeframes specified by DHS, employee representatives will be provided with an opportunity to submit written comments and/or to discuss their views with DHS officials on proposed final draft implementing directives.

(2) As the Department determines necessary, employee representatives will be provided with an opportunity to discuss their views with DHS officials and/or to submit written comments at initial identification of implementation issues and conceptual design and